

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NOT DEAD YET, NMD UNITED, DISABILITY
RIGHTS NEW YORK, MICHELLE BROSE,
MIKE VOLKMAN, JESSICA TAMBOR, and PÉRI
FINKELSTEIN, individually and on behalf of a class
Of all others similarly situated,

**NOTICE OF MOTION
TO DISMISS**

Plaintiffs,

Case No.: 2:20-cv-4819

- against -

(Brown, J.)(Tomlinson, M.J.)

ANDREW CUOMO, Governor of the State of New
York, in his official capacity, and HOWARD A. ZUCKER,
Commissioner of the New York State Department of
Health, in his official capacity,

Defendants.

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PLEASE TAKE NOTICE that upon Plaintiffs' Complaint, dated October 7, 2020, the accompanying Memorandum of Law, Declaration of Robert E. Morelli, Esq., with annexed exhibit, and the accompanying Declaration of Michael Bass dated December 23, 2020, Defendants ANDREW CUOMO, in his official capacity as governor of New York and HOWARD A. ZUCKER, in his official capacity as the Commissioner of the New York State Department of Health, shall move this Court before the Honorable Gary R. Brown, United States District Court Judge, United States District Court, Eastern District of New York, 100 Federal Plaza, Central Islip, New York, for an order pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the Complaint based on a lack of subject matter jurisdiction, a failure to state a claim upon which relief can be granted, and for such other and further relief as may be proper.

Dated: Hauppauge, New York
December 23, 2020

By:



ROBERT E. MORELLI, Esq.
Assistant Attorney General
300 Motor Parkway, Suite 230
Hauppauge, New York 11788

To: Counsel of Record for Plaintiffs via ECF